COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00302-CV

IN THE INTEREST OF E.G.

FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CV09-1135

MEMORANDUM OPINION[1]

I. INTRODUCTION

In three issues, Appellant, the mother of E.G., appeals the trial court's order awarding Appellee, the child's father, attorney's fees and denying her claims that she is entitled to retroactive child support and medical expenses related to E.G.[2] We will affirm.

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[1]*See* Tex. R. App. P. 47.4.

[2]We are not using the parents' or the child's names in order to protect the anonymity of the child subject to this suit.

II. BACKGROUND

Appellant and Appellee married in 1991. Appellant filed for divorce in 2009, and on May 17, 2011, the trial court signed a Final Decree of Divorce. In that decree, Appellee was ordered to pay child support beginning May 1, 2011, with that duty terminating when E.G. turned eighteen years old or graduated from high school. After E.G. graduated and turned eighteen, Appellee's employer continued to withhold child support for another seventeen weeks, totaling $3,628.82 in overpayments.

Because Appellee was unsuccessful in getting the withholdings terminated, he filed a petition to terminate the withholding order and to recover the excess payments. After initially filing a general denial, Appellant, in her first amended pleading, alleged an affirmative defense of excessive demand as well as claims against Appellee for fifty percent of out-of-pocket medical expenses, reimbursement for various expenses related to E.G.'s attending college, and retroactive child support.

At the hearing on Appellee's petition and Appellant's counter-petition, Appellee testified that his employer told him that he needed a letter from the Office of the Attorney General to stop the withholding and that the Office of the Attorney General said that he needed to contact the Parker County District Clerk. According to Appellee, the Parker County District Clerk directed him to paperwork on a website that required Appellant's signature. He averred that Appellant, though aware of the overpayments, refused to reimburse him and

refused to sign the paperwork he believed he needed to stop the withholding. Appellee said that because of Appellant's lack of cooperation, he retained counsel and filed the petition to terminate withholding.

Regarding medical expenses, Appellee testified that Appellant had never provided him notice that she had incurred any out-of-pocket medical expenses as required by the divorce decree. He also stated that because he provided E.G. with insurance, he had received documents from the insurance company, including explanation-of-benefits documents, but that he always forwarded those documents to Appellant and that he had never read them.

Appellant testified that she did not sign the paperwork Appellee presented to her because she thought she would waive her rights to retroactive child support and because Appellee was demanding that she leave E.G.'s graduation celebration so that the two of them could sign the paperwork with a notary. Appellant also testified she received the seventeen overpayments but did not reimburse Appellee.

The trial court granted judgment in favor of Appellee in the amount of $3,628.82 for reimbursement of excess payments and also awarded Appellee's counsel $1,000.00 in attorney's fees. The trial court denied Appellant's claims for medical expenses, other expenses related to E.G.'s attending college, and retroactive child support. This appeal followed.

III. DISCUSSION

A. Medical Expenses

In her first issue, Appellant argues that the trial court erred by not awarding her "fifty percent of all out[-]of[-]pocket medical cost[s] for the treatment of [E.G.]." Specifically, Appellant argues that she was entitled to these monies under the divorce decree. Appellee argues that Appellant failed to present evidence that she complied with the requirements of the divorce decree in order to receive these monies and that Appellant failed to present evidence that Appellee did not reimburse her for out-of-pocket expenses. We agree with Appellee.

We will not overturn a trial court's order regarding child support, including an order to provide medical support, unless the trial court clearly abused its discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *In re M.S.C.*, No. 05-14-01581-CV, 2016 WL 929218, at *2–4 (Tex. App.—Dallas Mar. 11, 2016, no pet.) (mem. op.). A trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to guiding rules or principles, and when it fails to analyze or apply the law correctly. *Iliff v. Iliff*, 339 S.W.3d 74, 78 (Tex. 2011).

Evidentiary-sufficiency issues are not independent grounds under this standard but are relevant factors in assessing whether the trial court abused its discretion. *Halsey v. Halter*, 486 S.W.3d 184, 187 (Tex. App.—Dallas 2016, no pet.); *see Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). This hybrid analysis involves a two-pronged inquiry—whether the trial court had

sufficient evidence upon which to exercise its discretion and, if so, whether the trial court erred in its application of that discretion. *City of Houston v. Kallinen*, 516 S.W.3d 617, 626 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (op. on reh'g).

The movant on a motion to enforce a child-support order, including an order to provide medical support, has the burden of establishing the amount of support owed. *See Beck v. Walker*, 154 S.W.3d 895, 903, 907 (Tex. App.—Dallas 2005, no pet.); *see also* Tex. Fam. Code Ann. § 154.183(c) (West Supp. 2016) (providing that health expenses not covered by medical insurance constitute "additional child support"); *see also In re M.S.C.*, 2016 WL 929218, at *3. To meet this burden, the movant must prove the difference between the payments made by the obligor and the payments required by the support order. *Beck*, 154 S.W.3d at 903.

In this case, the divorce decree ordered that "the party who pays for a health-care expense on behalf of [E.G.] shall furnish to the other party, within thirty days of receiving them, all forms, receipts, bills, and explanations of benefits paid reflecting the uninsured portion of the health-care expenses the paying party incurs on behalf of [E.G.]." The decree further ordered that if the paying party did not furnish these items within the stated thirty days, then the nonpaying party should pay the "expense no later than 120 days after the nonpaying party receives the documentation listed." In other words, the nonpaying party must reimburse the paying party within thirty days if the paying

party forwards the required documentation within thirty days of the paying party's receipt of those documents, but the nonpaying party has 120 days to reimburse the paying party if the paying party does not forward the documentation within thirty days of the paying party's receipt. And if the paying party does forward documentation within thirty days, "the nonpaying party shall pay his or her share of the uninsured portion of the health-care expense either by paying the health-care provider directly or by reimbursing the paying party . . . for any advance payment exceeding the paying party's share."

But Appellant provided no evidence at trial that she ever furnished Appellee any "forms, receipts, bills, and explanations of benefits paid." The only evidence regarding whether Appellant furnished "the documentation listed" to Appellee was his testimony that Appellant had never sent him any documentation of the type listed in the decree since the couple's divorce. The trial court was certainly free to interpret Appellee's testimony as indicating that Appellant had never sent him any requests or corresponding documentation in accordance with the divorce decree and thus that his obligation to pay a portion had never been triggered.

Appellant argues that Appellee was aware of the alleged medical expenses because he testified that he provided the health insurance for E.G. and that he received insurance documents from the insurance company, including

standard explanation-of-benefits documents.[3] Appellant further argues that the language in the decree providing that the nonpaying party was to pay the party's share of the expenses no later than 120 days after recieving such documentation controls. But Appellee specifically testified that he did not read these documents, did not know specifically what the documents entailed, and was unaware of any out-of-pocket expenses paid by Appellant, and he said instead that "when [he] got the insurance and the insurance bills . . . or whatever, [he] would send [them] over to [Appellant's] place." The trial court was free to interpret Appellee's testimony as indicating that he never read or knew of any out-of-pocket expenses paid by Appellant. In fact, despite the fact that the trial court urged Appellant that what it would need in order to determine this issue in her favor would be "evidence that [Appellee] would be aware of th[e]se co-pays," Appellant provided none. The language in the decree put an affirmative obligation on Appellant as the paying party to provide Appellee, the nonpaying party, with documentation of what Appellant actually paid before imposing any obligation on Appellee to reimburse Appellant for her share. Even if Appellee had read the EOBs that he forwarded to Appellant, awareness of the existence or application of a co-pay is

[3]In her brief, Appellant points to several items that she deems evidence that is not in the record or was not introduced at trial. She also points to attachments to her pleadings that were not introduced at trial. *See Ceramic Tile Int'l, Inc. v. Balusek*, 137 S.W.3d 722, 725 (Tex. App.—San Antonio 2004, no pet.) (holding that documents attached to pleadings are not evidence). We decline to address these items.

not the same as notice and documentation that Appellant paid any co-pays or other health-care expenses.

We conclude that the evidence sufficiently supports the trial court's finding that Appellant failed to carry her burden that she was entitled to the claimed medical expenses, and we hold that the trial court did not err in its application of its discretion to the facts of this case. *See Kallinen*, 516 S.W.3d at 626. We overrule Appellant's first issue.

B. Retroactive Child Support

In her second issue, Appellant argues that the trial court erred by not granting her retroactive child support. Specifically, Appellant claims that she is entitled to retroactive child support for the period of time that she and Appellee were separated prior to entry of their divorce decree, which ordered Appellee to pay child support for E.G. We disagree.

The term "retroactive child support" may apply in two different contexts. *See* Tex. Fam. Code Ann. § 154.009(a) (West 2014) (stating the two scenarios wherein a trial court may order retroactive child support); *see also Peterson v. Office of the Attorney Gen.*, 990 S.W.2d 830, 832 (Tex. App.—Fort Worth 1999, no pet.). First, the trial court can order retroactive support in instances where child support has not been previously ordered. *Peterson*, 990 S.W.2d at 832–33. Second, the trial court can retroactively modify existing child support obligations. *Id.*; *see also* Tex. Fam. Code Ann. § 156.401 (West Supp. 2016).

The case now on appeal does not fit into either of the two situations because (1) Appellee was a party to the final divorce decree which ordered him to pay child support for E.G. and (2) Appellant has not claimed that retroactive support is sought because of changed circumstances after the final decree was entered. *See Peterson*, 990 S.W.2d at 832–33. We overrule Appellant's second issue.

C. Attorney's Fees

In her third issue, Appellant argues that the trial court erred by granting Appellee's counsel $1,000.00 in attorney's fees. We agree with Appellee that it is unclear whether Appellant is complaining that the trial court abused its discretion by awarding the attorney's fees based on family code provisions or whether she is arguing that the trial court should have segregated attorney's fees—an objection that she did not bring before the trial court. *See Bruni v. Bruni*, 924 S.W.2d 366, 368 (Tex. 1996) (stating that the award of the attorney's fees in a suit affecting the parent-child relationship is within the trial court's discretion); *see also Moroch v. Collins*, 174 S.W.3d 849, 871 (Tex. App.—Dallas 2005, pet. denied) (holding that failure to request segregation of attorney's fees in trial court waives review of alleged error). This confusion is compounded because Appellant cites no authority in her brief regarding attorney's fees. Because she cites no authority, this issue is inadequately briefed, and we

overrule it.[4] *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."); *McKellar v. Cervantes*, 367 S.W.3d 478, 484 n.5 (Tex. App.—Texarkana 2012, no pet.) ("Bare assertions of error, without argument or authority, waive error.").

IV. CONCLUSION

Having overruled all three of Appellant's issues, we affirm the trial court's order.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, SUDDERTH, and KERR, JJ.

DELIVERED: August 31, 2017

[4]This court is cognizant that the Supreme Court of Texas has stated that disposing of appeals for harmless procedural defects is disfavored and that we are to construe briefs "reasonably, yet liberally, so that the right to appellate review is not lost by waiver." *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008). But no liberal or reasonable interpretation can save Appellant's third issue. Even though Appellee has proffered two possible interpretations of Appellant's third issue, we are unable to glean those arguments from the paltry briefing provided. Furthermore, we are unable to glean our own interpretation from what Appellant has provided on this issue.